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February 4, 2011

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Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW,  
Washington, DC 20423-0001

**Re: STB Finance Docket No. 35412**

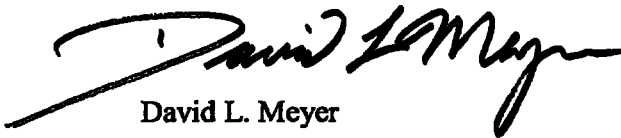
Dear Ms. Brown:

228760

Attached for electronic filing in the above-referenced docket are the Comments of Norfolk Southern Railway Company in response to the Board's decision served December 23, 2010.

Thank you for your assistance.

Sincerely,



David L. Meyer

Attachment

cc (with attachment): John M. Scheib, Esq.  
David L. Coleman, Esq.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 35412**

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**MIDDLETOWN & NEW JERSEY RAILROAD, LLC —  
LEASE AND OPERATION EXEMPTION — NORFOLK SOUTHERN  
RAILWAY COMPANY**

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**COMMENTS OF  
NORFOLK SOUTHERN RAILWAY COMPANY**

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*Attorneys for Norfolk Southern Railway Company*

Dated: February 4, 2011

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 35412**

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**MIDDLETOWN & NEW JERSEY RAILROAD, LLC —  
LEASE AND OPERATION EXEMPTION — NORFOLK SOUTHERN  
RAILWAY COMPANY**

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**COMMENTS OF  
NORFOLK SOUTHERN RAILWAY COMPANY**

Norfolk Southern Railway Company ("NS") submits these Comments in response to the Board's decision served December 23, 2010. As the owner of the rail lines leased by Middletown & New Jersey Railroad LLC ("M&NJ") and subject to the Board's exemption in this docket, NS has a significant interest in this proceeding.

NS notes the Board's interest in considering the "potential anticompetitive effect of the lease credit provision" disclosed in M&NJ's Notice of Exemption pursuant to 49 C.F.R. § 1150.43(h). NS intends to participate in this proceeding to address any assertions made by interested parties concerning this and other issues in response to the Board's decision soliciting comments.

NS believes its lease to M&NJ does not warrant the attention and inevitable expenditure of resources occasioned by the Board's decision to commence this proceeding. That lease, along with the related sublease and grant of incidental trackage rights, is an entirely procompetitive arm's-length transaction whereby NS hopes to improve the efficiency and customer-responsiveness of operations on this small part of

NS's rail network. Under NS operation, shippers on the lines generated persistently low traffic volumes relative to the amount of trackage needed to serve them, and the lines were rather remote from other NS local operations, making them costly to operate. NS concluded that a lease of these lines to a shortline operator like M&NJ would preserve the lines and offer the best chance for improving service and traffic levels.

NS had no interest in restricting M&NJ's ability to interchange with any carrier of its choosing, and the lease imposes no such restriction. In fact, as M&NJ's Notice of Exemption explains, NS offered to lease these lines in exchange for a fixed annual cash payment to NS, with no contractual provision addressing – much less restricting – M&NJ's interchange with other carriers. M&NJ responded to NS's offer by asking for a way to reduce its cash payment obligations under the lease. NS responded favorably to that proposal, since a lower cash outlay would free M&NJ to devote greater resources to improving the lines' condition and providing better service to on-line customers.<sup>1</sup>

The lease as executed by the parties provides M&NJ with the option it requested: M&NJ can either (a) make the full cash payment NS insisted on as the price for leasing these lines; or (b) obtain a credit against that cash rental obligation for each car that it interchanges with NS. The amount of the credit is set at a level that will reduce M&NJ's cash rental payments to a nominal \$1,000 fee if M&NJ elects to interchange with NS the

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<sup>1</sup> In NS's experience, shortlines considering whether to assume operation of light-density rail lines routinely seek to reduce their cash rental obligations. As the Board is aware, a similar set of negotiations took place between NS and Jackson & Lansing Railroad Company with respect to the lease of the lines addressed in Finance Docket No. 35411 – and NS similarly proposed to address that shortline's concerns by offering it a lease credit arrangement as the most effective means of lowering the shortline's cash outlays without restricting its interchange options.

same number of cars that NS handled on the lines in the year preceding M&NJ's assumption of operations. Accordingly, even if M&NJ were to elect to offset the maximum amount of its cash rental obligation by continuing to route existing traffic via NS, the lease credit arrangement would not give M&NJ further credits for routing via NS any *additional traffic* it might succeed in generating on the lines.

Under these circumstances, NS submits that the lease credit provision is entirely procompetitive, and fosters the Board's – and NS's – goals of facilitating shortline transactions that offer the promise of preserving and improving service on light-density rail lines.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "David L. Meyer", is written over a horizontal line.

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Dated: February 4, 2011

**CERTIFICATE OF SERVICE**

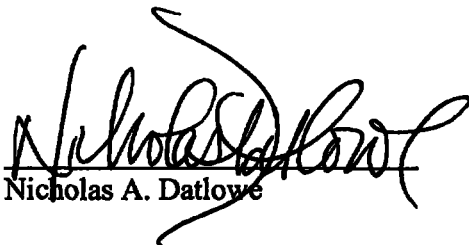
I, Nicholas A. Datlowe, certify that on this date a copy of Comments of Norfolk Southern Railway Company, was served by email and by first-class mail, postage prepaid, on all parties of record, specifically:

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Dated: February 4, 2011